STATE OF MICHIGAN

COURT OF APPEALS

MAXI MOVER EXPRESS, INC,

Plaintiff-Appellant,

v

GRANNING AIR SUSPENSIONS and TUTHILL TRANSPORT TECHNOLOGIES,

Defendants-Appellees.

UNPUBLISHED
October 28, 2004

No. 248726
Ottawa Circuit Court
LC No. 02-044306-CZ

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Plaintiff Maxi Mover Express, Inc., appeals as of right the May 6, 2003 order of Ottawa Circuit Judge Edward R. Post granting the summary disposition motion of defendants Granning Air Suspensions and Tuthill Transport Technologies on statute of limitations grounds. We affirm.

I. Basic Facts And Procedural History

On September 25, 1995, Maxi Mover contracted to purchase semi-trailers from West Michigan Trailer Sales. The trailers were assembled using suspension systems produced by Granning and Tuthill. Maxi Mover took possession of two trailers at the time the contract was executed, and took delivery of two more trailers by February 1996.

Maxi Mover filed this breach of contract action on September 9, 2002. Maxi Mover alleged that Granning and Tuthill breached a warranty of future performance, and that the breach was not discovered until October 15, 1998, when it received a fax from Granning indicating that the trailers were equipped for off-road rather than highway use.

Granning and Tuthill moved for summary disposition under MCR 2.116(C)(7), asserting that Maxi Mover was aware of any defects shortly after delivery of the trailers, and that it failed to file its action within the four-year limitations period of the UCC for breach of warranty. Maxi Mover responded that its action was based on a warranty for future performance. After hearing oral argument on April 14, 2003, the trial court granted the motion of Granning and Tuthill, finding that the action was time-barred.

II. Summary Disposition

A. Standard Of Review

We review de novo the trial court's decision to grant a motion for summary disposition under MCR 2.116(C)(7) to determine if the moving party was entitled to judgment as a matter of law.[1]

B. Legal Standards

When reviewing a motion for summary disposition under MCR 2.116(C)(7), we must accept as true a plaintiff's well-pleaded factual allegations and construe affidavits or other documentary evidence in plaintiff's favor.[2] If there are no factual disputes and reasonable minds cannot differ concerning the legal application of the facts, we determine whether plaintiff's claim is barred by the statute of limitations as a question of law.[3]

C. The UCC's Statute Of Limitations

Maxi Mover argues that a warranty pertaining to future performance of goods sold is an exception to the four-year statute of limitations provided for by the UCC. The agent of Granning and Tuthill explicitly warrantied the future performance of the trailers by stating that the problems would be fixed, and that the retrofit of the trailers in 2000 gave rise to a new warranty. Granning and Tuthill respond that the statute of limitations on a warranty claim under the UCC begins to run when goods are tendered, regardless of the buyer's knowledge of the breach. According to Granning and Tuthill, Maxi Mover failed to meet the requirements to establish a warranty for future performance where there was no explicit warranty, no express duration stated, and no promise that became part of the bargain.

The statute of limitations for a breach of contract for sale action is four years.[4] The cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach, except where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance, in which case the cause of action accrues when the breach is or should have been discovered.[5] Attempts by the seller to correct defects do not toll the statute of limitations.[6]

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[1] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[2] *Brennan v Edward D. Jones & Co*, 245 Mich App 156, 157; 626 NW2d 917 (2001).

[3] *Lipman v William Beaumont Hosp*, 256 Mich App 483, 487; 664 NW2d 245 (2003).

[4] MCL 440.2725(1).

[5] MCL 440.2725(2).

[6] See *Rokicsak v Colony Marine Sales & Service*, 219 F Supp 2d 810, 819 (ED Mich, 2002), citing *Zahler v Star Steel Supply Co*, 50 Mich App 386; 213 NW2d 269 (1973).

To be a warranty of future performance, the seller must make an explicit extension of the warranty to future performance, expressly indicating the duration of the future period.[7] Here, Maxi Mover failed to identify an explicit extension of the warranty to future performance, and did not present any indication how long that warranty would last. Maxi Mover's assertion that the agent of Granning and Tuthill said they would fix the problem cannot satisfy the requirements for showing a warranty as to future performance where that statement was made after the contract was entered into, and was not part of the bargain.[8] Maxi Mover has presented no authority to support its argument that a new warranty was created when Granning and Tuthill attempted to correct the problem. Maxi Mover never moved to amend its complaint, and the trial court was never asked to rule on that question. Therefore, we conclude that the trial court did not err in granting the motion of Granning and Tuthill for summary disposition.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra

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[7] *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002).

[8] MCL 440.2313(1)(a).